

HOUSE BILL REPORT

SB 5489

As Passed House:

March 1, 2022

Title: An act relating to business entities.

Brief Description: Concerning business entities.

Sponsors: Senators Pedersen, Padden, Dhingra and Mullet; by request of Washington State Bar Association.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 2/18/22, 2/22/22 [DP].

Floor Activity:

Passed House: 3/1/22, 94-1.

Brief Summary of Bill

- Amends provisions of the Washington Business Corporations Act concerning record dates, mergers, special meetings, maintenance of shareholders lists, and share exchanges.
- Changes provisions of the Washington Uniform Limited Partnership Act concerning partner transactions with the partnership, distributions, limitations on distributions, partner's transferable interest, and property in conversions and mergers.
- Amends provisions of the Washington Limited Liability Company Act concerning approval of conversion, admission and withdrawal of members, foreign professional limited liability companies, and members without an economic interest.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass. Signed by 17 members: Representatives Hansen, Chair; Simmons, Vice Chair; Walsh, Ranking Minority Member; Gilday, Assistant Ranking Minority Member; Graham, Assistant Ranking Minority Member; Abbarno, Davis, Entenman, Goodman, Kirby, Klippert, Orwall, Peterson, Thai, Valdez, Walen and Ybarra.

Staff: Matt Sterling (786-7289).

Background:

Washington Business Corporations Act.

The Washington Business Corporations Act (WBCA) provides requirements for creating, organizing, and operating corporations and the relationship between shareholders, directors, and officers of the corporation. The WBCA provides default rules for many provisions that may be altered in the corporation's articles of incorporation or bylaws. The articles of incorporation and the bylaws are the governing documents for the corporation and set forth rules for numerous organizational and operational issues. The WBCA is modeled largely after the American Bar Association's revised Model Business Corporations Act. The Corporate Act Revision Committee of the Business Law section of the Washington State Bar Association periodically reviews the WBCA and makes recommendations to update the act.

Record Date.

Record date means the date on which a corporation determines the identity of its shareholders and their shareholdings. The bylaws of a corporation may set, or provide the manner to set, the record date for one or more voting groups to determine the shareholders that are entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to approve any other corporate action. If the bylaws do not set or provide the manner to set a record date, the board of directors of the corporation may fix a future date as the record date.

Special Meetings.

A corporation may hold a special meeting of shareholders on call of its board of directors or any person authorized to do so by the articles of incorporation or bylaws. A special meeting may also be called by shareholders if shareholders holding at least 10 percent of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting execute, date, and deliver to the corporation one or more written demands for the meeting. The record date for determining shareholders entitled to demand a special meeting is the first date on which an executed shareholder demand is delivered to the corporation.

Shareholders Lists.

Corporations must prepare an alphabetical list of the names of all of its shareholders on the record date who are entitled to notice of a shareholder's meeting. The shareholders list must be available for inspection by any shareholder beginning 10 days prior to the meeting and continuing through the meeting.

Mergers and Share Exchanges.

The WBCA requires articles of merger or share exchange filed with the Secretary of State to effect a merger or share exchange include the plan of merger or share exchange itself. Generally, shareholders of a Washington corporation that is a party to a merger are required to approve the plan of a merger. However, a medium-form merger dispenses with the requirement of a shareholder approval of a merger in the case of two-step transactions that involve a front-end tender offer followed by a back-end merger. The plan of merger must include the manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation, or into cash or other property.

Washington Uniform Limited Partnership Act.

The Washington Uniform Limited Partnership Act (WULPA) provides for a form of business organization known as a limited partnership. General partners manage the business and are personally liable for the debts and obligations of the limited partnership. Limited partners are liable for the partnership's debts and obligations only to the extent of their contributions to the partnership, except in limited circumstances where the limited partner participates in control of the business. The Partnership and LLC Law Committee of the Business Law section of the Washington State Bar Association periodically reviews the WULPA and makes recommendations to update the act.

Definitions.

The WULPA defines a partnership agreement to include the agreement as amended and restatements of partnership agreements are also treated as partnership agreements. The WULPA's definition of "person" includes both a corporation and a public corporation and the definition of "corporation" includes both publicly and privately owned corporations.

Distributions.

The WULPA provides that a partnership's obligation to make distributions is subject to offset for any amount owed to the partnership by the partner or dissociated partner on whose account the distribution is made. The WULPA limits the ability of a partnership to make distributions based on the partnership's solvency and its ability to pay its debts in the ordinary course. The WULPA requires that when a partnership's indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution with the effect of the distribution measured on the date the payment is made.

Partner Transactions with Partnership and Transferable Interest.

The WULPA provides that a partner has the same rights and obligations with respect to transactions with the partnership as a person not a partner. A partner, however, is or may be subject to other applicable law that would limit the partner's rights and obligations in comparison with those of an unrelated party. The WULPA makes no statement concerning whether a partner's transferable interest includes an interest in specific partnership property.

Property in Conversions and Mergers.

The WULPA states that all property owned by the converting organization remains vested in the converted organization. The WULPA also states that, in event of a merger, all property owned by each constituent organization that ceases to exist vests in the surviving organization.

Washington Limited Liability Company Act.

The Washington Limited Liability Company Act (LLC Act) provides for a form of business organization known as a limited liability company (LLC) that combines the tax advantages of a partnership with the limited liability advantages of a corporation. An LLC has flexible structures and management. An LLC only needs one individual member owner, but multiple business organizations may also join together as members to form an LLC. Similar to a corporation, the LLC structure protects the members from liability in most circumstances. Similar to a partnership, LLCs are not taxed as a separate business entity under federal law. The Partnership and LLC Law Committee of the Business Law section of the Washington State Bar Association periodically reviews the LLC Act and makes recommendations to update the act.

Foreign Professional Limited Liability Companies.

A "professional limited liability company" is defined as a Washington LLC formed for the purposes of rendering professional services. "Foreign professional limited liability company" is not defined, but the LLC Act authorizes a foreign professional LLC to render professional services in Washington if it complies with the LLC Act and each individual rendering professional services in the state is legally authorized to do so.

Distributions.

The LLC Act distinguishes between indebtedness whose terms provide that payments can be made only to the extent a distribution could then be made and all other indebtedness. The effect of the LLC's indebtedness in the first category is measured when payments are made. However, the effect of all other LLC indebtedness is measured when the indebtedness is distributed instead of when payments on the indebtedness are made.

Admission of Members.

A person acquiring the interest of an LLC member (transferee) will hold all the economic rights of the transferor, and will be admitted as a member upon the consent of all members. When a single individual member dies, there are no members to approve the admission of the transferee as a member. If fewer than 90 days have passed since the death of the sole member, the transferee could vote to admit itself as a member.

Member Disassociation.

A member may not withdraw from an LLC without the written consent of all other members. The withdrawal of a member is an event of disassociation and the withdrawn member loses the right to participate as a member, but retains the member's economic rights as a transferee. A member's dissociation does not discharge the member from any liability

to the LLC or other members that the member incurred while a member of the LLC. However, a member may transfer the member's economic rights and transferable interest without member consent. Unless admitted as a member by unanimous member consent, the transferee is not a member and has no management rights.

Plan of Conversion.

The LLC Act currently requires unanimous approval of conversions. Conversions can implement material changes to the rights of an LLC member, but dissenters' rights are not available to the members of a converting LLC because of the unanimous-member approval requirement. The requirement for unanimous member approval can be modified by the LLC agreement. An LLC agreement can be oral or written. An oral LLC agreement can authorize a threshold for member approval of a conversion that is less than unanimous.

Summary of Bill:

Changes to the Washington Business Corporations Act.

Provisions governing the fixing of record dates for share dividends and distributions are moved to other chapters within the WBCA. Corporations are not allowed to set a record date that precedes the date on which the resolution fixing the record date is adopted by the board of directors.

When multiple shareholders aggregate their holdings to satisfy the ownership threshold required to call a special meeting, demands for a special meeting must be received within 60 days of the first demand delivered to the corporation. Corporations are expressly permitted to maintain the shareholders list on an electronic network.

Provisions governing the required content of articles of merger and share exchanges no longer require the plan of merger or share exchange to be included in the filing that effects the transaction. These provisions will only require the identification of the parties to the merger or share exchange. In the case of a merger, the surviving corporation must be identified as well as certain other information relating to satisfaction of shareholder approval requirements and amendments to the surviving corporation's article of incorporation.

Terms and definitions for medium-form mergers are created and such mergers are authorized and limited to public companies. Dissenters' rights are clarified in relation to medium-form mergers.

A plan of merger governed by the WBCA must include the manner and basis of converting the shares of each corporation into shares, obligations, other securities of the surviving or any other corporation, cash or other property, or contain the manner and basis of canceling some or all shares.

Restatements that include amendments to a surviving corporation's articles of incorporation

are expressly permitted in a plan of merger.

Changes to the Washington Uniform Limited Partnership Act.

The definition of "partnership agreement" is amended to include partnership agreements that are amended or restated. The definition of "person" is amended to remove the distinction between public corporation and corporation.

The amendments to the WULPA makes clear that a partner's rights may not, in all circumstances, be as clear as those of a nonpartner, by noting that a partner may be subject to other applicable law. The amount due and payable to the partnership by the partner or dissociated partner is the amount to be offset whenever distributions are made by the partnership.

The LLC Act's two-tiered approach to distributions of partnership debt is adopted. A distribution of partnership indebtedness for which payments are limited, to the extent that a distribution could then be made, is treated as a distribution whose effect is measured on the date payment is actually made. Distributions of any other partnership indebtedness is measured as of the date the indebtedness is distributed.

A partner's transferable interest does not include an interest in specific partnership property. Title in real estate and all other property owned by the converting organization remains vested in the converted organization. In the event of a merger, title in real estate and all other property owned by each constituent organization that ceases to exist vests in the surviving organization.

Changes to the Washington Limited Liability Company Act.

"Foreign professional limited liability company" is defined as a foreign LLC formed for the purpose of rendering professional services. A professional LLC may be a member of another professional LLC if the members and managers are licensed or legally authorized to render the same professional services. Similarly, a foreign professional LLC may be a member of another professional LLC if the members and managers are licensed or legally authorized to render the same professional services in any jurisdiction other than this state as the members and managers of the professional LLC.

When a transferor is the only member of an LLC, the transferee is admitted as a member of the LLC after the transferee acquires all of the transferor's LLC interest. A person may be admitted as a member of an LLC without acquiring a transferable interest and without making or being obligated to make a capital contribution.

Withdrawal of a member or a holder of a transferable interest in an LLC is defined as the member or holder of the transferable interest providing written notice to the LLC of its intent to surrender all of its transferable interest and rights as a member to the LLC. A withdrawal is effective as of the later of the date the LLC receives the written notice of withdrawal or the date specified in such notice. Withdrawal is effective upon notice from a

member or from the holder of a transferable interest that the member or transferee is surrendering to the LLC all of its economic rights and all of its management and other rights as a member. A member may withdraw from an LLC at any time, and a member's withdrawal does not entitle it to a return of its capital from the LLC.

Limited liability company conversions must be approved by all members or as otherwise specified by a written LLC agreement.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The recommended changes are made by very dedicated volunteer lawyers that spend time to update these acts to keep them updated with other states. These changes help keep Washington competitive with other states. This bill will allow shareholders lists to be kept electronically.

(Opposed) None.

Persons Testifying: Senator Jamie Pedersen, prime sponsor; Matt LeMaster, Washington State Bar Association Partnerships and LLC Law Committee; and Michael Hutchings, Washington State Bar Association Corporate Act Revision Committee.

Persons Signed In To Testify But Not Testifying: None.